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M E M O R A N D U M

**TO: Dan Murphy, Mayor, City of Anna Maria**  
**FROM: Gretchen R. H. (“Becky”) Vose, Esq., City Attorney**  
**DATE: February 8, 2024**  
**SUBJECT: CBD Sales at Arts and Crafts Festival within City Limits of Anna Maria – Special Event Permit**

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This opinion is in response to your request to analyze the applicable Florida law and City ordinances regarding the sale of CBD products (made from Hemp) in the City of Anna Maria in conjunction with a Special Event for Arts and Crafts to be held at Roser Church scheduled this weekend. My analysis follows.

The Anna Maria City Code provides as follows:

**Sec. 34-2. Growing, processing, distributing and sale of marijuana prohibited.**

The growing, processing, distributing and sale of marijuana within the city limits of Anna Maria is hereby prohibited. Marijuana shall be defined for purposes of this section to include all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including but not limited to "low-THC cannabis," as defined in F.S., § 381.986. A violation of this section shall be punished as set forth in section 1-12 of this Code of Ordinances.

There is no question that CDB and Hemp are derived from of plant of the genus Cannabis. See: Florida Statutes, Section 581.217(3)(e) (2023) which provides:

(e) “Hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis, with the exception of hemp extract, which may not exceed 0.3 percent total delta-9-tetrahydrocannabinol on a wet-weight basis.

See also: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5531363> for more information on this subject from the National Library of Medicine or the National Institute of Health.

The Florida Department of Agriculture and Consumer Services Office of Agricultural Law Enforcement (which regulates aspects of Hemp in Florida ) has published a document (hereinafter “FDACS Document”) entitled “HEMP AND CBD INFORMATION [FLORIDA]

FOR \_\_\_\_\_LAW ENFORCEMENT” which can be found at <https://ccmedia.fdacs.gov/content/download/94417/file/hemp-and-cbd-information-for-law-enforcement.pdf>. In the FDACS document, a legislative history of Hemp is set forth as follows:

**HEMP LAW BACKGROUND** The Agriculture Improvement Act of 2018 (“2018 Farm Bill”) was signed into law on December 20, 2018. The 2018 Farm Bill defined hemp as the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9 tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis. The 2018 Farm Bill created a process for states and tribal governments to establish state hemp programs in which individuals could legally cultivate hemp. The 2018 Farm Bill also removed hemp, as defined above, from the federal Controlled Substances Act. Senate Bill 1020, titled “State Hemp Program”, became effective on July 1, 2019. In SB 1020 the Legislature states that hemp is an agricultural commodity and hemp-derived cannabinoids, including, but not limited to, cannabidiol, are not controlled substances or adulterants. SB1020 amended the criminal definition of “Cannabis” in s. 893.02, F.S., to exclude “Hemp” or industrial hemp (see amendment to 893 below). SB 1020 is codified as Section 581.217, Florida Statutes, which defines Hemp” as the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9 tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis. Therefore, Hemp (Total  $\Delta$ -9 THC concentration of 0.3% or less) is legal in the state of Florida. See ss. 581.217 and 1004.4473, F.S.

It is clear from the above information that certain types of Hemp are no longer illegal in Florida. However, that does not mean that local governments cannot regulate matters related to Hemp, even if otherwise legal.

The regulation of Hemp has clearly not been preempted to the State. This is obvious since in a FDACS document (which is located at <https://www.fdacs.gov/Business-Services/Food/Food-Establishments/Retail-Food-Establishment-Permit>) is a clear statement in large print that acknowledges that there can be other regulations of cities and/or counties that may regulated Hemp and CBD. See below:

### **Requirements of Other Governmental Agencies**

Regulations vary among counties and municipalities, and requirements from both may or may not apply to your business. Before making financial commitments, such as signing a lease or construction contracts or purchasing an existing business, contact the business license, zoning and building authorities in your area to find out their requirements.

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Based on the above analysis, it is my legal opinion that the sale of CBD products within the City of Anna Maria is prohibited under Section 34-2 of the City's Code of Ordinances, and that such ordinance can be enforced regardless of the change of status of CBD and Hemp under general Florida law.